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ALEXANDRIA VA 22320-0190

JUL 05 2002

Director's Office  
Office of Patent Publication

In re Application of :  
Hideki Komatsuda, et al. :  
Application No. 09/396,582 :  
Filed: September 15, 1999 :  
Attorney Docket No. 105203 :

**DECISION ON PETITION**

This is a decision on the Petition Under 37 CFR § 1.181(a) Requesting Withdrawal Of Holding Of Abandonment, received in the Patent and Trademark Office (PTO) on April 24, 2002.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition for Withdrawal of Holding of Abandonment."

Applicant submits that the Notice of Abandonment was erroneously issued by the Patent Office. Further, that rather than paying the Issue Fee, Applicants filed a Request for Continued Examination (RCE) and an Information Disclosure Statement (IDS), including a PTO-1449.

The Office acknowledges the timely receipt of the RCE, IDS, and PTO-1449, of which are present in the application file. The Office's PALM system indicates that the afore-mentioned correspondence was received via certificate of mailing on June 13, 2001. The PTO's Revenue Accounting and Management (RAM) system indicates that the fee for the RCE in the amount of \$740 was received on June 13, 2001.

In response to the applicants compliance with the conditions in filing the Request For Continued Examination under 37 CFR § 1.114, a new Notice of Allowance and Issue Fee Due was eventually mailed on September 25, 2001.

The application was held abandoned for failure to timely pay the issue fee as required in the new Notice of Allowance and Issue Fee Due, which set a three (3) month statutory period for reply.

Since, the Office has no record of a response to the Notice—payment of the issue fee—, the abandonment cannot be withdrawn at this time.

Although this petition for withdrawal of the holding of abandonment is being dismissed, other petition remedies are available.

The petitioner should consider petitioning the Commissioner as follows:

- Under 37 CFR 1.137(a), a petition for the revival of an *unavoidably* abandoned application must include the following:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee set forth in § 1.17(l);
- (3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (d) of this section.

.or

- Under 37 CFR 1.137(b), a petition for the revival of an *unintentionally* abandoned application must be:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) Accompanied by the petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (d) of this section.

Further correspondence with respect to this matter should be addressed as follows:

*By mail:* Assistant Commissioner for Patents  
Box DAC  
Washington, DC 20231

*By facsimile:* 703-308-6916  
Attn.: Office of Petitions

*By hand:* Crystal Plaza Four, Rm. 3C23  
2201 South Park Place  
Arlington, VA

Telephone inquiries relating to this matter may be directed to the Office of Petitions at 703-305-9282.

*Thomas E. Hawkins*

Thomas E. Hawkins  
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Office of the Director  
Office of Patent Publication